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No. 02-117

Supreme Court, U.S.
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In The

Supreme Court of the United States

STATE OF MINNESOTA,

Petitioner,

v.

JOAN MARTIN, GUARDIAN AD LITEM FOR TROY HOFF,

Respondent.

On Petition For A Writ Of Certiorari To The Minnesota Supreme Court

REPLY TO BRIEF IN OPPOSITION

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I. A Direct Conflict Exists Between *Martin*'s Interpretation Of Federal Medicaid Law And That Of Four Other States' Highest Courts And The Department Of Health And Human Services.

Respondent's Brief in Opposition illustrates that there are two conflicting interpretations of how the federal Medicaid third-party recovery provisions operate: one held by the Minnesota Supreme Court, and one held by numerous other state and federal courts and the federal agency the oversees the Medicaid program.[1] Neither of these competing views of federal law is premised upon the nuances of, or differences in, particular state laws. Thus, Respondent's attempt to distinguish *Martin* from these conflicting cases based upon the specifics of Minnesota law fails because it ignores the crux of the *Martin* decision: the interpretation of *federal* Medicaid law.

In particular, the Minnesota Supreme Court ruled that federal Medicaid law provides that a State require Medicaid recipients to assign to the State the right to recover medical expenses – and only medical expenses so designated – from liable third parties. (Petitioner's Appendix ("App.") at A-39.) As a result of this interpretation, the State must then sue the liable third parties itself to recover the medical expenses to which it has been assigned. (*Id.*)

The State's recovery of those expenses does not conflict with the federal anti-lien provision, according to the Minnesota Supreme Court, because "[b]y assigning the right to recover medical expenses, the Medicaid recipient

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[1] In addition to the three cases cited in the State's Petition that conflict with *Martin* concerning preemption of lien statutes, the North Dakota Supreme Court recently issued a decision creating a fourth direct conflict with *Martin* relating to the assignment statute. *See Grey Bear v. North Dakota Dep't of Human Servs.*, No. 20010241, 2002 WL 1941356, at *1-5 (N.D. Aug. 23, 2002).

no longer owns that right to recovery." (App. at A-25.) On the other hand, it concluded that Medicaid recipients do not assign the State the right to recover its full medical expenditures from recoveries designated for other damages because that would "circumvent[ ] the anti-lien provision and eliminate[ ] the efficacy of that provision's protection." (App. at A-34.)

Numerous other courts and the Department of Health and Human Services ("HHS") construe federal Medicaid law quite differently. *See, e.g., Wilson v. State*, 142 Wash.2d 40, 48, 10 P.3d 1061, 1066 (2000), *cert. denied*, 532 U.S. 1020 (2001); *Cricchio v. Pennisi*, 660 N.Y.S.2d 679, 682-83, 683 N.E.2d 301, 304-05 (1997); *California Dep't of Health Servs.*, DAB No. 1504, 1995 WL 66334 (Dep't of Health and Human Servs. Jan. 5, 1995) (App. at 202-03); (*see also* Pet. Br. at 20-24 (discussing numerous adjudications and interpretations by HHS relating to the interpretation of the federal lien and assignment provisions)). Under their reading, which the State of Minnesota follows, federal law permits a State to obtain the assignment of the right to recover from third parties up to the full amount of a State's medical assistance expenditures, regardless of the recovery's designation. This assignment does not prohibit the recipient from pursuing claims stemming from the injuries that required the medical care, but rather assigns the right to *recover* for these damages from third parties, up to the amount that the State has expended on a recipient's medical care. *See, e.g., Wilson*, 142 Wash.2d at 48, 10 P.3d at 1066 (quoting 42 U.S.C. § 1396a(a)(25)(H) and stating that, based upon this provision, "the state is not limited to recovery from only that portion of the settlement specifically allocated to medical expenses. The federal statute states recovery is to the extent of payment made by the state for health care items or services.").

The core difference between these two conflicting constructions of federal Medicaid law is whether the federal assignment provision somehow forbids a State from recouping its medical expenses from third-party recoveries that have been designated to cover other

damages. The Minnesota Supreme Court ruled that it does, based mainly on its narrow view that the "purpose of the anti-lien provision is to protect the recipient's limited assets, including nonassigned rights to recover." (App. at A-34.) No other court or agency agrees. This disagreement has nothing whatsoever to do with the particular language of the underlying state assignment, lien statutes or common law.[2] Rather, it is entirely based on different readings of the language and intent of the various federal provisions.

In sum, because the threshold question in this preemption case is the correct interpretation of *federal* Medicaid law, consideration of minor state law differences should not even come into play. Only when federal law has been properly interpreted can each state court consider whether its state laws conflict with the federal Medicaid scheme or interfere with its purpose. In addition, once the broad assignment allowed by federal law has been made, that is, assignment of all proceeds from a liable third party (to the extent of the state's expenditures), whether a state's lien is on "all causes of action," "recovery rights," or "proceeds," is irrelevant. As *Martin* conceded, assigned causes of action are not the property of the recipient (*see* App. at A-26, 36-37, 50) and do not implicate the anti-lien provision.

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[2] In addition to being irrelevant to the holding in *Martin*, Respondent's attempt to distinguish herself factually from recipients in other states' cases by citing Minnesota common law is disingenuous. Her claims that, after assignment, she could not pursue a claim for medical expenses under Minnesota common law fails to acknowledge that she did in fact claim damages for both past and future medical expenses on behalf of her son. (Pl. Compl. at 8 and Am. Compl. at 8) (reproduced in State's Response Brief to the Minnesota Supreme Court at PA27). Indeed, the settlement ultimately reached between her and the defendants specifically covered claims for these medical expenses. The Minnesota Supreme Court confirmed this fact when it stated, "Martin, in her memoranda of law to the district court and in her briefing on appeal, erroneously characterizes the nature of the settlements as only for Hoff's claim . . . ." (App. at A-52.)

A. *Martin* Directly Conflicts With Three Other Decisions Of States' Highest Courts That Upheld State Lien Statutes Against A Federal Preemption Challenge.

Contrary to Respondent's assertion that the issue in *Martin* was unique, the highest courts of Washington, Utah and New York considered the identical issue posed here: whether the federal anti-lien provision prohibits imposition of any lien against a Medicaid recipient's third-party recovery. *See Wilson*, 142 Wash.2d at 42, 10 P.3d at 1063; *Wallace v. Estate of Jackson*, 972 P.2d 446, 447-48 (Utah 1998), *cert. denied*, 528 U.S. 810 (1999); *Cricchio*, 660 N.Y.S.2d at 680-81, 683 N.E.2d at 302-03. In holding that the federal anti-lien provision did not bar such recoveries, each court reasoned that the assignment to the state of rights to recover medical expenses prevented the state's lien statutes from acting on "property" of the recipient. *See Wilson*, 142 Wash.2d at 46-47, 10 P.3d at 1064-66; *Wallace*, 972 P.2d at 448; *Cricchio*, 660 N.Y.S.2d at 682-83, 683 N.E.2d at 304-05.

As noted above, because of the different interpretations of federal law, this conflict with *Martin* cannot be explained away by highlighting slight differences in semantics between Minnesota's lien statute and the other states' lien laws.[3] Even if minor wording variations are considered, they have no practical effect.[4] They certainly

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[3] For example, where Minnesota's statute places "a lien for the cost of the care upon any and all *causes of action* or *recovery rights*," Minn. Stat. § 256B.042, subd. 1 (2000) (emphasis added), Washington's lien statute places a lien "upon *any recovery* by or on behalf of the recipient from such tort feasor." Wash. Rev. Code § 43.20B.060(2) (2000) (emphasis added). Similarly, the lien statutes of Utah and New York place a lien upon *proceeds* payable to or on behalf of a recipient by a third party. *See* Utah Stat. § 26-19-5(1)(b) (1998); *Cricchio*, 660 N.Y.S.2d at 681, 683 N.E.2d at 303 (citing N.Y. Soc. Serv. Law § 104-b (McKinney 1996)).

[4] Minnesota's statute, which places a lien on "the cause of action or recovery rights," is unenforceable unless a "recovery" or "proceeds" as

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cannot be used to explain why Minnesota's statutes, as opposed to these other states' statutes, are preempted under the same federal law. Thus, no parsing of each state's lien language alleviates the direct conflict between *Martin* and the other states' highest courts in their interpretation of the same *federal* Medicaid laws.

B. *Martin* Directly Conflicts With A Recently-Issued Decision Of The Highest Court Of Another State Relating To The Federal Assignment Provision.

One day after Respondent filed her brief opposing this petition, the North Dakota Supreme Court issued a decision creating a fourth direct conflict with *Martin*. *See Grey Bear,* 2002 WL 1941356, at *1-5. Unlike *Wilson, Wallace* and *Cricchio*, however, which upheld state lien statutes against preemption challenges, the North Dakota Supreme Court specifically focused on the effect of federal and state assignment provisions. *Id.* It found that these assignment provisions allowed North Dakota "the right to recover any settlement received by . . . [the Medicaid recipient] even if designated for pain and suffering. . . . " *Id.* at *4.

Grey Bear was a recipient of Medicaid benefits who argued that he made only a "partial assignment" to the state for recovery of his medical expenses, and retained claims for all other damages. *Id.* at *1. Like Martin, when Grey Bear settled with the tortfeasors, he claimed that he only settled his non-medical claims of pain and suffering and that, therefore, the state was not entitled to any portion of his recovery. *See id.* After comparing the governing federal assignment statute at 42 U.S.C. § 1396k with

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used in Washington, Utah and New York, first results. Likewise, the "recovery" or "proceeds" upon which the lien is placed would necessarily result from a "cause of action or recovery rights," as used in Minnesota's lien statute.

North Dakota's assignment statute, the North Dakota Supreme Court rejected his arguments.

In its analysis, the North Dakota Supreme Court dismissed *Martin's* holding in favor of a New York decision on the same issue, *Link v. Town of Smithtown,* 175 Misc.2d 238, 670 N.Y.S.2d 692 (N.Y. Sup. Ct. 1997).[5] *Grey Bear,* 2002 WL 1941356, at *3. In *Link,* the Supreme Court, Suffolk County, determined that *all* of the proceeds of a personal injury settlement were available to satisfy the state's Medicaid claim. 175 Misc.2d at 240, 670 N.Y.S.2d at 694. In reaching its decision, the *Link* Court relied on the formula set forth in 42 U.S.C. § 1396k(b), stating:

> This provision indicates that the government has priority in recouping funds from third parties who are liable for a Medicaid recipient's medical expenses, and that only the *remainder* of those funds becomes available to the Medicaid recipient.

Id. at 241-42, 670 N.Y.S.2d at 695 (internal quotations and citations omitted).

Moreover, *Grey Bear* directly conflicts with the holding in *Martin* that *requires* Minnesota to independently pursue a separate action against the tortfeasor. The North Dakota Supreme Court explained that an "assignment is for the right of payment from the third-party, not solely the right to pursue a cause of action against the third party." 2002 WL 1941356, at *5. It further stated:

> The federal Medicaid scheme grants the state the option either to pursue the claim directly against a third party or to collect from any third-party recovery the applicant or recipient might receive. The Department was well within its rights to

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[5] *Link* was decided subsequent to a remand order in *Cricchio. See Cricchio,* 660 N.Y.S.2d at 684, 683 N.E.2d at 306.

> refuse to pursue a separate malpractice action, and to recover from the settlement instead.

Id. (citations omitted).

In sum, four decisions of the highest courts of other states conflict with *Martin* and no basis exists to distinguish them from *Martin*. This conflict should be resolved by this Court.

II. This Case Presents An Important National Question.

In its petition, Minnesota explained that the *Martin* decision casts doubt upon the legitimacy of assignment, lien and subrogation statutes throughout the country, and thus presents an important national question. (Pet. Br. at 24-27.) The significance of the question is confirmed by the amicus brief filed by seven state Medicaid agencies urging this Court to grant the petition. These states warn that "the peculiar interpretation [*Martin*] adopts is more than certain to be advanced in other States, calling into question the practices that many States have adopted, and leaving States uncertain as to how to responsibly discharge their third party recovery obligations." (Br. of Amici Curiae at 4.) Given the potential impact of *Martin*, this important federal constitutional issue warrants review. *See, e.g., Wisconsin Dep't of Health and Family Servs. v. Blumer*, 534 U.S. 473 (2000); *Keffeler v. Dep't of Social and Health Servs.*, 145 Wash.2d 1, 32 P.3d 267 (Wash. 2001), *cert. granted,* 122 S. Ct. 2288 (2002).

Respondent downplays the national import of this case by again asserting that its result is too entangled in Minnesota's third-party liability laws and common law to have wide-ranging application. (Opp'n Br. at 27.) As discussed above, however, the crux of the *Martin* decision was its interpretation of *federal* law.[6] Specifically, the court

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[6] Respondent's assertion that Minnesota "can seek to pass a law in Minnesota which places a lien on the property of third parties or can

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found that the federal anti-lien provision prohibits a state from recovering medical assistance costs through a lien, and that the *federal* assignment statute limits assignments to third-party payments for medical care. Thus, *Martin*'s holding on the scope of the federal Medicaid provisions may be applied to assess the validity of every state's recovery methods.

In addition, the statutes that *Martin* struck down are effectively identical to many other states' third-party liability laws. Because federal law requires all participating states to pass laws that enable them to recover Medicaid payments when third parties are liable, *see* 42 U.S.C. §§ 1396a(a)(25)(H) and 1396k (2000), all states have passed some version of lien, subrogation or assignment statutes. The wording of these statutes vary, but they are all substantively similar and rely on the same premise: that Medicaid must be the payer of last resort with priority in recoveries, and that states can recover through operation of law rather than through direct participation in the litigation. *See, e.g.*, App. at A-281-87.

Respondent also errs in claiming that the national impact of *Martin* is further lessened because the court did not address the priority issue, asserting that Minnesota is seeking an "advisory" opinion from this Court.[7] (Opp'n Br.

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seek other legislation to change the common law of Minnesota" ignores the precise holdings of *Martin*. (Opp'n Br. at 27.) Fueled by its narrow interpretation of the federal assignment statute, *Martin* holds that *only the State* can actively pursue recoveries for medical expenditures, and that the State may only recover from the portion of a recovery designated for "medical care." (App. at A-36-37, 50.) Changing the wording of Minnesota's law to place a lien on "third-party recoveries" versus "all causes of action or recovery rights" thus has no practical effect.

[7] Respondent further claims that the *Martin* Court did not reach this issue because Minnesota "abrogated its responsibility to directly and independently pursue recovery." (Opp'n Br. at 19.) Although Respondent repeatedly attacks Minnesota for its inactive role in the litigation, the State properly followed state law procedures at that time. When Respondent filed her cause of action, state law *required* Minnesota to file a lien to recoup its Medical Assistance payments. *See* Minn.

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at 27.) This argument is a red herring. Respondent mistakenly characterizes the State's second question presented as focusing on whether the State has *priority* in its recoveries when it independently litigates a case, (*see id.* at 14, 27), an issue that *Martin* admittedly did not explicitly discuss. Instead, the State's second question presented asks this Court to determine the scope of the federal *assignment* provision – an issue expressly decided by the Minnesota Supreme Court.

In interpreting the scope of the federal assignment provision, this Court must necessarily determine whether states have priority in recouping their medical assistance expenditures from entire recoveries, rather than from just those portions specifically designated for medical expenses. In striking down Minnesota's third-party lien and subrogation statutes, which contained a formula for determining priority of the State's claim, and narrowly construing Minnesota's assignment statute, *Martin* eliminated the State's ability to assert priority under state law. This holding conflicts with the formula contained in the federal assignment provision. This federal provision requires a state to recover its medical assistance expenditures up to the amount necessary to reimburse it for its payments, paying "the remainder of such amount

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Stat. § 256B.042, subd. 1 (1992 and 1998). This lien statute authorized Minnesota to file an independent action only "if no action [by or on behalf of the recipient] has been brought." *Id.* at subd. 3. Thus, notwithstanding Respondent's frustration at Minnesota's reliance upon its lien rights, the State's litigation strategy was exactly as state law contemplated before the *Martin* decision was decided.

In addition, Respondent's assertion that Minnesota "paid none of the expenses of this litigation" is false. (Opp'n Br. at 9.) Under the formula contained in the lien statute, Minnesota must reduce its claim, dollar for dollar, to cover attorneys' fees and costs if there is not enough money to cover both the State's claim and these recovery expenses. Minn. Stat. § 256B.042, subd. 3. Accordingly, after the settlement in this case, the State reduced its Medical Assistance claim from over $600,000 to $58,581.82. (*See* App. at A-13.)

collected" to the recipient. 42 U.S.C. § 1396k(b); *see also* 42 U.S.C. § 1396a(a)(25)(H). Because this priority issue was raised by the Minnesota Supreme Court's interpretation of federal assignment law, it is an appropriate question for this Court to decide.

In sum, *Martin* is not the narrow decision that Respondent claims it is. *Martin* interprets federal Medicaid lien and assignment provisions in a way that dramatically alters how states such as Minnesota recover their Medicaid expenditures. That interpretation is contrary to those of other courts and the federal agency that administers Medicaid. Unless these conflicting interpretations are corrected by this Court, states will continue to face uncertainty and to incur unnecessary costs in their third-party recovery programs. This case presents a substantial question that should be resolved by this Court.

CONCLUSION

For the foregoing reasons, the State's Petition For A Writ of Certiorari should be granted.

Respectfully submitted,

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